

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CENTER FOR POPULAR DEMOCRACY :
ACTION and CITY of NEWBURGH, :
:

Plaintiffs, :

-against- :

BUREAU OF THE CENSUS; STEVEN :
DILLINGHAM, Director, Bureau of the Census; :
UNITED STATES DEPARTMENT OF :
COMMERCE; and WILBUR ROSS, Secretary of :
Commerce, :

Defendants. :
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ALVIN K. HELLERSTEIN, U.S.D.J.:

ORDER

19 Civ. 10917 (AKH)

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In this suit—one of several to challenge aspects of the above-named Defendants’ oversight of the 2020 decennial Census¹—Plaintiffs contend that Defendants’ “Final Operation Plan” for the 2020 census includes five arbitrary and capricious agency decisions² that will result in a differential undercount of persons of color, lower income people, and a number of other “hard-to-count” communities, in violation of the Administrative Procedure Act, 5 U.S.C. §§ 500 *et seq.*, and the “actual Enumeration” clause of the Constitution, *see* U.S. Const. Art. I. § 2. Now before me is Plaintiffs’ motion to compel expedited production of the administrative record. *See*

¹ *See generally Nat’l Ass’n for the Advancement of Colored People v. Bureau of the Census*, 945 F.3d 183 (4th Cir. 2019) (“NAACP”); *Dep’t of Commerce v. New York*, 139 S. Ct. 2551 (2019); Brennan Center for Justice, *Litigation About the 2020 Census* (Aug. 5, 2019), <https://www.brennancenter.org/our-work/court-cases/litigation-about-2020-census> (last visited Dec. 30, 2019).

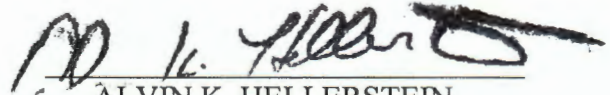
² The five decisions challenged in the Complaint follow: “(a) a plan to hire an unreasonably small number of enumerators; (b) drastic reduction in the number of [Census] Bureau field offices; (c) significant reduction in the Bureau’s communications and partnership program, including the elimination of local, physical Questionnaire Assistance Centers; (d) decision to replace most In-Field Address Canvassing with In-Office Address Canvassing; and (e) decision to make only limited efforts to count inhabitants of units that appear vacant or nonexistent based on unreliable administrative records.” Compl., ECF No. 1, at ¶ 36.

Pl. Mot. to Compel, ECF No. 3. For the reasons so stated on the record at the hearing conducted today, January 9, 2020, Plaintiffs' motion is granted. Production of the administrative record and related briefing shall proceed as follows:

1. On or before January 17, 2020, Defendants shall file a letter in this Court identifying the decisionmakers responsible for each of the five challenged agency actions catalogued in footnote 2, *supra*.
2. On or before January 24, 2020, Defendants shall produce to Plaintiffs the administrative record underlying the five challenged agency actions.
3. Plaintiffs and Defendants shall file their motions for a preliminary injunction and dismissal, respectively, by January 31, 2020. The parties shall file oppositions to these motions by February 21, 2020. And the parties shall file their replies by March 4, 2020.
4. Oral argument will be held on March 18, 2020, at 2:30 p.m., at which time the parties are to be prepared to address both of the by-then-pending motions for a preliminary injunction and dismissal.

SO ORDERED.

Dated: January 9, 2020
New York, New York


ALVIN K. HELLERSTEIN
United States District Judge